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Before the
FEDERAL COMMUNICATIONS COMMISSION AUG - 6 2004
 Washington, D.C. 20554

Federal Communications Commission
 Office of Secretary

In the Matter of)
)
 Amendment of Section 73.202(b),) MB Docket No. _____
 FM Table of Allotments) RM- _____
 For FM Broadcast Stations.)
)
 (High Point and Liberty, North Carolina))

To: Secretary to forward to Assistant Chief (Allocations), Audio Division

PETITION FOR RULEMAKING

Capstar TX Limited Partnership ("Capstar"), the licensee of WVBZ(FM), Channel 262C, High Point, North Carolina (Facility ID No. 74204), by its attorneys and pursuant to Section 1.420(i) of the Commission's Rules, hereby respectfully petitions the Commission for modification of the Commission's Table of Allotments for FM Broadcast Stations (Section 73.202 of the Commission's Rules) to: (a) delete Channel 262C from High Point, North Carolina; (b) add Channel 262C0 to Liberty, North Carolina; and (c) modify the license of WVBZ(FM) to specify operations on Channel 262C0 at Liberty, North Carolina, in lieu of operation on Channel 262C at High Point, North Carolina (collectively, the "Proposal").

In reviewing a proposed change to the FM Table of Allotments, the Commission considers whether the proposal would serve one or more of the Commission's four allotment priorities. 1/ Here, grant of the Proposal would satisfy the third allotment priority by

1/ See *Parker & Port St. Joe R&O*, 11 FCC Rcd 1095, 1095 (¶ 4) (1996). The four allotment priorities are: i) one full-time aural reception service to a community; ii) a second full-time aural reception service to a community; iii) one local transmission service to a community; or iv) other public interest factors. *Id.* The second and third criteria have equal priority.

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delivering a first local aural transmission service to Liberty, North Carolina, as well as further the fourth allotment priority – other public interest factors.

Commission precedent holds that a community that is a Census-designated place *or* that is incorporated presumptively qualifies as a community for allotment purposes and thereby merits its own local transmission service. 2/ Liberty presumptively qualifies on both counts: Liberty has been designated as a place in the 2000 Census 3/ and Liberty has been incorporated since 1889. 4/

Liberty's other characteristics likewise demonstrate that it deserves its own local transmission service. According to the 2000 Census, Liberty has a population of 2,661 persons. 5/ Liberty has its own town hall, mayor, town manager, and town council. The town provides many municipal services, including water, sewer, and trash, and it has its own police and fire departments. 6/ Liberty has its own branch of the county library 7/ and a Randolph County public elementary school, called Liberty School, is within the town limits. 8/ Liberty has its own chamber of commerce 9/ and post office. 10/ There are two

2/ See e.g., *Cleveland and Ebenezer, Mississippi*, 10 FCC Rcd 8807 at ¶ 6 (Allocations Br. 1995) ("The Commission's long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the community is either incorporated or listed in the U.S. Census."); *Reydon, Oklahoma*, 18 FCC Rcd 3222 at ¶ 2 (Ass't Chief, Audio Div., released Mar. 4, 2003).

3/ See U.S. Census Bureau, Census 2000, <http://data.osbm.state.nc.us/profiles/mini/1603738100.pdf> (copy at Exhibit 1).

4/ See "Liberty History" on a website about The Town of Liberty located at <http://transgender.coolfreepages.com/liberty> (copy at Exhibit 2).

5/ See Exhibit 1.

6/ See "Utilities" and "Police & Fire" on The Town of Liberty website (copy at Exhibit 2) at <http://transgender.coolfreepages.com/liberty/utills.html> and <http://transgender.coolfreepages.com/liberty/stats.html>.

7/ See the Liberty Public Library section of the Randolph County Public Library website at <http://www.randolphlibrary.org/libertylocation.htm> (copy at Exhibit 3).

8/ See the Liberty School webpage at <http://www.randolph.k12.nc.us/schools/liberty> (copy at Exhibit 4).

9/ See the listing for "Liberty Chamber of Commerce" in Liberty, North Carolina in the Yahoo! Yellow Pages at <http://yp.yahoo.com/> (copy at Exhibit 5).

assisted-living facilities located in Liberty as well as the Roy Reitzel Center, a social center for Liberty's senior citizens named after the town's former mayor and housed in Liberty's old town hall. On weekends, Liberty residents of all ages attend concerts at the Liberty Showcase Theater, which is in the town's historic district, 11/ and go-cart races at the Liberty Raceway, which is on the outskirts of the town. 12/ Local businesses fulfill the daily needs of Liberty residents. Within Liberty there are grocery stores, restaurants, beauty shops, florists, general stores, hardware stores, gas stations, doctor offices, jewelry stores, a dry cleaners, and a car dealership. 13/ Dozens of these businesses include "Liberty" in their name. 14/ Photos of Liberty residents and businesses, including one taken at the Liberty Shopping Center, are displayed in the "Liberty: Our Town" photo exhibit on a local newspaper's website. 15/ Liberty residents are particularly proud of the historical significance of their town, as evidenced by the Liberty Heritage Wall—a seven feet tall and 20 feet wide mural with scenes from the town's past, which connects the town hall to the library. 16/ Downtown Liberty includes several historically-significant buildings, including

10/ See the listing for "Liberty Post Office" on the United States Postal Service website at <http://www.usps.com/> (copy at Exhibit 6).

11/ See the Liberty Showcase website at <http://www.libertyshowcase.com> (copy at Exhibit 7).

12/ See the Liberty Raceway website at <http://www.libertyraceway.com> (copy at Exhibit 8).

13/ See Yahoo! Yellow Page listings for "Liberty, North Carolina" at <http://yp.yahoo.com> (copy at Exhibit 9).

14/ See Yahoo! Yellow Page listings at <http://yp.yahoo.com/py/ypResults.py?stx=liberty&stp=a&tab=&desc=liberty&city=Liberty&state=NC&zip=&uzip=27298&msa=3120&country=us&cs=4&ed=xY8A6a1o2TwxnFIK6TCeFrBg2hNs1MJo23w6ViXWc7a> for businesses in Liberty, North Carolina with "Liberty" in their name (copy at Exhibit 10).

15/ See "Liberty: Our Town" on the *News & Record* website at <http://www.news-record.com/photo/liberty/liberty1.html> (copy at Exhibit 11).

16/ See a June 25, 2001 news article about the unveiling of Liberty's historic mural on *The Courier-Tribune* website at <http://www.courier-tribune.com/nws/mural25.html> (copy at Exhibit 12). See also the "Liberty Township" section of the Randolph County Historical Photograph Collection at http://www.randolphlibrary.org/liberty_township.asp (copy at Exhibit 13).

the Patterson Cottage Museum, ^{17/} and twice per year hundreds of antique-collectors gather in Liberty for the Liberty Antiques Festival, which has been judged the Best Outdoor Show in the mid-Atlantic states by *MidAtlantic Antiques Magazine*. ^{18/} While remaining mindful of the past, Liberty also has an eye on the future. Liberty's former town manager recently told the *Greensboro News & Record* that the town hall regularly receives phone calls from developers and prospective residents who are interested in Liberty. ^{19/} Finally, it is also noteworthy that Liberty is not part of any urbanized area. ^{20/} Under Commission precedent, the presence of these civic, social and business organizations, and Liberty's independence from any urbanized area confirm that Liberty is a community deserving of its own aural transmission service.

High Point, the current community of license of WVBZ(FM), is itself an Urbanized Area, while Liberty is not located within any urbanized area. ^{21/} The present 70 dBu contour of WVBZ(FM) on Channel 263C at High Point encompasses 100% of the population and 100% of the area of the Burlington, Greensboro, High Point and Winston-Salem, North

^{17/} See the description of the Patterson Cottage Museum on the North Carolina Department of Public Instruction website at <http://www.itpi.dpi.state.nc.us/counties/Randol/Randlph/patterson.html> (copy at Exhibit 14).

^{18/} See the "Events" section of the Randolph County Tourism Development Authority Website at <http://www.visitrandolph.org/events.asp?id=22> and "A Fun Festival in the Fields at Liberty," which was published by the *Maine Antiques Digest* in 2001 and is available online at <http://www.maineantiquedigest.com/articles/libe1201.htm> (copies of both at Exhibit 15).

^{19/} See the news article "Leaving Liberty" by Mark Brumley in the March 14, 2004 issue of the *Greensboro News & Record* (copy at Exhibit 16). In an interview with former town manager Chad Howell, Howell told the *Greensboro News & Record* that Liberty is gradually growing and that he believes it will continue to do so. Much of that growth, he said, has been through home building on vacant lots in town. Howell added that the town hall gets several calls a week from persons interested in relocating to Liberty and town officials have heard from subdivision developers interested in building in Liberty. Howell believes that Liberty has the plans, the infrastructure, and the staff in place to handle growth, according to the article.

^{20/} See Exhibit 17 (Technical Exhibit).

^{21/} *Id.*

Carolina Urbanized Areas. 22/ The proposed Channel 262C0 70 dBu contour from the reference coordinates for Liberty will encompass 100% of the population and 100% of the area of the Burlington, Durham, Greensboro and High Point, North Carolina Urbanized Areas. 23/ Because the Proposal involves relocation from an Urbanized Area to a non-Urbanized Area, and because the allotment already provides significant service to several Urbanized Areas, no *Tuck* showing 24/ is required. 25/ In any event, the record before the Commission which establishes that Liberty is a community deserving of a first local transmission service also is responsive to the *Tuck* factors. Out of an abundance of caution, the *Tuck* factors are reviewed here.

In a *Tuck* analysis, the Commission considers three criteria: (1) the signal population coverage, (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area. 26/ The interdependence factor is the most important criterion considered in making an allotment decision involving the proposed reallocation of a station to an urbanized area. 27/ In *Tuck*, the Commission set forth eight factors in assessing the interdependence of a specified community. 28/ The Commission has considered a community as independent

22/ *Id.*

23/ *Id.*

24/ *See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck").*

25/ *See, e.g., Greeley and Broomfield, Colorado, 15 FCC Rcd 9419 at ¶ 2 (Chief, Allocations Branch 2000) (no Tuck analysis required when station already provides significant 70 dBu coverage to the Denver and Boulder Urbanized Areas); Boulder and Lafayette, Colorado, 12 FCC Rcd 583 ¶ 4 (Chief, Allocations Branch 1997) (no Tuck analysis required when station is being relocated from the Boulder Urbanized Area to a non-Urbanized Area and significant 70 dBu coverage to the Denver Urbanized Area is already provided)*

26/ *See, e.g., Saluda and Irmo, South Carolina, DA 04-137 at ¶ 3 (MB rel. Jan. 30, 2004).*

27/ *Id.* at ¶ 3.

28/ The eight independence factors are: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own weekly

when a majority of these factors demonstrate that the community is distinct from the urbanized area. 29/

Regarding criterion one, signal population coverage, the Commission reviews “the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis.” 30/ Here, assuming such criterion applies to Liberty, which is not part of, nor adjacent to, an Urbanized Area, as noted above, the station already provides 70 dBu service to four Urbanized Areas, and following relocation would provide service to three of those Areas, plus another Urbanized Area. Such service does not preclude favorable consideration as a first local service. 31/

As to the size and proximity of the proposed community to the central city of the urbanized area, Liberty is not proximate or contiguous to any Urbanized Area -- there are intervening rural areas and other communities between Liberty and the Urbanized Areas of Burlington, Greensboro, Durham and High Point, 32/ and the drive from Liberty to the center of any of these areas exceeds 20 miles. 33/ Liberty’s population of 2,661 persons is

newspaper or other media that cover the community’s local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. *Tuck*, 3 FCC Rcd at 5378.

29/ See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (MMB 1996).

30/ See *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia*, 11 FCC Rcd 5758 at ¶ 10 (Chief, Policy and Rules Division 1996).

31/ See e.g., *Ashland et al.* at ¶ 6.

32/ See Exhibit 18 (U.S. Census Bureau and MapQuest maps).

33/ MapQuest calculates the driving distance between Liberty and Durham as 50.54 miles, between Liberty and Greensboro as 22.85 miles, between Liberty and High Point as 35.52 miles, and between Liberty and Burlington as 20.76 miles. See <http://www.mapquest.com/>. See also *Saluda and Irmo, South Carolina* at ¶ 3 (independent community is located about 10 miles from central community); *Ashland, Coaling, Cordova, Decatur, Dora, Hackleburg, Hobson City, Holly Pond, Killen, Midfield, Scottsboro, Sylacauga, and*

substantial. In any event, the Commission has stated that the first two criteria have less significance than evidence of independence. 34/

Turning to the first of the eight independence factors, there are no precise statistics as to the extent to which Liberty residents work in Liberty; however, the 2000 Census profile indicates that 58.2 percent of Liberty's workers work within their country of residence and none of the aforementioned urbanized areas are within Randolph County. 35/ Moreover, as previously stated, there are a multitude of businesses in Liberty, providing employment opportunities for the residents of Liberty.

As to independence factor two – whether the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests – the Liberty Chamber of Commerce distributes a monthly newsletter addressing local events and the services the chamber provides. In addition, an independent monthly newsletter called *The Liberty Leader* was recently launched and focuses on providing advertising opportunities directed to the residents of Liberty. Residents also read Randolph County's two newspapers, *The Randolph Guide*, which is published weekly, and *The Courier-Tribune*, which is published daily. *The News & Record*, which is published in Greensboro, also has a Randolph section that covers local news and interests. In addition, the town's unofficial website, 36/

Tuscaloosa, North Carolina, Atlanta, Georgia, and Pulaski, Tennessee, DA 04-1026 at ¶ 7 (MB rel. Apr. 19, 2004) (“*Ashland et al.*”) (Midfield is an incorporated community located nine miles from Birmingham with an elected mayor and city council).

34/ See e.g., *Ashland et al.* at ¶ 6.

35/ See http://factfinder.census.gov/servlet/GCTTable?_bm=y&-state=gct&-context=gct&-ds_name=DEC_2000_SF3_U&-box_head_nbr=GCT-P12&-mt_name=&-tree_id=403&-redoLog=true&-caller=geoselect&-geo_id=04000US37&-format=ST-7&-lang=en (U.S. Census Bureau, Census 2000) (copy at Exhibit 19).

36/ See <http://transgender.coolfreepages.com/liberty/>.

provides information about Liberty for residents and visitors and includes a section for news and a bulletin board feature.

Factor three – whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area – is clearly demonstrated by the decision of Liberty’s community leaders and residents to incorporate the town over a century ago and in the pride residents have in the community’s history. 37/

Liberty also clearly qualifies under factor four – whether the specified community has its own local government and elected officials. As previously stated, Liberty has been incorporated for over a century and is recognized as a town by the U.S. Census Bureau. 38/ Liberty has its own town hall, mayor, town manager, and a five-member town council. The mayor is elected every two years and the town council members are elected every four years; the town manager is appointed by the town council.

As to the fifth factor – whether the smaller community has its own telephone book provided by the local telephone company or zip code – Liberty is included in the Randolph County phonebook and, while Liberty has its own post office, it currently shares a zip code with Kimesville, North Carolina.

Liberty also meets the sixth indicia of independence – whether the community has its own commercial establishments, health facility and transportation systems. As previously described, Liberty has a number of businesses and establishments, including both national

37/ See, *Maryland; Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, DA 03-2980 at ¶ 13 (MB rel. Sept. 29, 2003) (“Poquoson’s leaders and residents view it as a separate, independent community, as evidenced by Poquoson’s decisions in 1952 to leave York County and to become a City in 1975”).

38/ *Id.* at 3.

chains (Food Lion, Family Dollar, CVS Pharmacy, Subway Sandwiches, etc.) as well as locally-owned establishments (Liberty Food Mart, Bargain Shop, Liberty Drug, Kidd's Drive In, etc.).

Regarding factor seven – the extent to which the specified community and the central city are part of the same advertising market – Liberty is part of the Greensboro-High Point-Winston Salem, North Carolina Arbitron market (as is the current WVBZ(FM) community of license, High Point). As was the case in the Norfolk Arbitron market in *Crisfield, Maryland et. al*, 39/ there are several municipalities within the Greensboro-High Point-Winston Salem Arbitron market. 40/ Like Poquoson, which is a considerable distance from Norfolk and Virginia Beach, and which was found to be an independent community in *Crisfield, Maryland et. al*, 41/ Liberty is a considerable distance from these other municipalities. Also, advertisers can target Liberty residents by advertising in *The Liberty Leader* or on the town's unofficial website.

Lastly, Liberty also demonstrates its independence under factor eight – the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. The Town of Liberty itself provides many municipal services, including water, sewer, trash, police, and firefighting. 42/

In sum, even assuming *arguendo* that the Commission would evaluate Liberty under the *Tuck* criteria, such an analysis confirms the independence of Liberty. Moreover, the Proposal will not deprive any current community of license of its sole local transmission

39/ *Crisfield, Maryland; Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, DA 03-2980 at ¶ 16.

40/

41/ *Crisfield, Maryland; Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, DA 03-2980 at ¶ 16.

42/ *Id.* at 6.

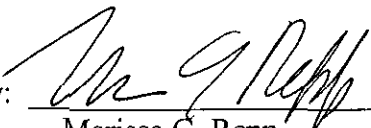
service: High Point, the current community to which WVBZ(FM) is assigned, will continue to have local aural transmission service from WGOS(AM), WHPE-FM, WMAG(FM), WMFR(AM) and WYSR(AM).

The Commission's fourth allotment priority – other public interest factors – also weighs heavily in favor of the Proposal. As the Technical Exhibit at Exhibit 17 demonstrates, the proposed re-allotment will result in a net service gain of 1,008,812 persons. ^{43/} The Technical Exhibit also demonstrates that the Proposal is consistent with the Commission's technical rules. A statement from Capstar affirming that it will apply for the allotment if changed as proposed also is attached.

For the foregoing reasons, the Commission should issue a Notice of Proposed Rule Making to adopt the Proposal, and approve the proposed modification of the FM Table of Allotments and of WVBZ(FM)'s license under Section 1.420(i) of the Commission's Rules.

Respectfully submitted,

CAPSTAR TX LIMITED PARTNERSHIP

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August 6, 2004


^{43/} The Proposal will enable WVBZ(FM) to serve 2,428,562 persons. *See* Technical Exhibit. Although the Proposal also will result in a loss in service to 201,019 persons, all loss-area residents will remain served by five or more aural services, and so will continue to be well-served. *See Id.*

DECLARATION

I, Stephen G. Davis, declare as follows:

1. I am Senior Vice President – Capitol Management and Engineering of Capstar TX Limited Partnership ("Capstar").
2. Capstar intends to apply for construction permit for Station WVBZ(FM), to operate on Channel 262C0 at Liberty, North Carolina, upon adoption of the proposed rule making amending Section 73.202, Table of Allotments, FM Broadcast Stations (High Point and Liberty, North Carolina).
3. If awarded the construction permit for Station WVBZ(FM) on Channel 262C0 at Liberty, North Carolina, Capstar will promptly construct and operate such facilities.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate to the best of my knowledge, information and belief.


Stephen G. Davis

Executed this 6th day of August, 2004.